HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the Case.

W.P.No. 991 of 2003.m.s

Mahendra Singh Bedi

Vs

Additional District Judge

Fast Track Court IV

Haridwar And others

Approved for reporting.

_____

Not approved for reporting

Date of decision 29.9.2004

Initial of Judge

Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 991 of 2003 (M/S)

Mahendra Singh Bedi ……. Petitioner

Versus

Additional District Judge/
Fast Track Court IV Haridwar
and others ……... Respondents

…….

Mr. Arvind Vashistha, learned counsel for the petitioner
Mr. B.S.Adhikari, learned counsel for the respondents.

Hon.Rajesh Tandon , J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order passed by the Prescribed Authority dated 28.02.2001 as well as Appellate Authority in Rent Control Appeal No. 26 of 2001 dated 21.8.2003.

Factual Matrics of the Case

Briefly stated, an application was filed the landlord Mali Ram Pande under section 21 (1) (a) of the U.P. Act No. XIII of 1972 for release of the house situated at Lalkurti, Sub-Division Roorkee, district Haridwar, of which the petitioner is tenant @ Rs.20/- per month. Originally Sardar Jaswant Singh Bedi was the tenant of the premises, who expired on 10.05.1997 leaving behind his son Mahendra Singh Bedi, another son Tirath Singh Bedi and third son Ratan Singh Bedi. The two sons, namely, Tirath Singh Bedi and Ratan Singh Bedi have been impleaded as respondent nos.4 and 5 and Mahendra Singh Bedi alone has filed the present writ petition.

Accordingly to the landlord- respondent no.3, the family of the landlord consists of the following members:

(i) self
(ii) B.N.Pande, son
(iii) J.N.Pande, son

(iv) V.N.Pande,son
(v) Smt. Asha Manor, daughter
(vi) Km. Geeta Pande, daughter
(vii) Wife of B.N.Pande
(viii) Three major sons of B.N.Pande, namely, Romil Pande, Rahul Pande and Sharad Pande
(ix) Wife of second son J.N.Pande,
(x) Two daughters of J.N.Pande, namely, Km. Shald and Km. Shagun
(xi) Son of J.N.Pande,namely, Ankit Pande
(xii) Wife of third son V.N.Pande
(xiii) Two sons of V.N.Pande, namely, Ankush Pande and Anuj Pande.

According to the application under section 21 (1)(a) of the Act No. 13 of 1972, the landlord has submitted that Sri B.N.Pande after retirement from the Indian Army has come to Delhi and is residing alongwith his family members. Sons of B.N.Pande are also residing alongwith the landlord. The family of J.N.Pande also comes and resides with the landlord. Sri B.N.Pande at present is accommodating with Sri J.N.Pande, but due to paucity of accommodation with J.N.Pande, it is not possible to cater the requirement of the family members. The daughter of landlord Km. Geeta is disabled. Two sons of Sri B.N.Pande are also studying in St. Xavier School. The landlord has stated in his application in para 6 that in house no. 106/107 situated at Lalkurti, there are only four rooms and it is not possible to cater the need of family members in four rooms and only in one room Sri V.N.Pande and his wife are accommodated, one room is being used as drawing room, one room is meant for Km. Geeta and one room is meant for landlord. However, the grand-sons, namely, Ankuish and Anuj have no room for studying. Even the guests of B.N.Pande have no place to sit and looking the requirement of the family members, the need of the landlord is bona fide and comparative hardship also lies in his favour. The landlord has further stated that all the three sons of Sardar Jaswant Singh are well placed and Mahendra Singh Bedi has been provided accommodation from the department at house no. 15 MES colony, Lalkurti, Roorkee and he is residing there alongwith family members.

The other son Tirath Singh Bedi had got his own house at house no. 562 Sanik Colony, Roorkee. He himself constructed the same.

The third son Ratan Singh Bedi is also having his house at 614, Sainik Colony, Roorkee, which he has constructed 8 years back, where he is residing alongwith family members.

Apart form the aforesaid house available to the petitioner, there is yet another premises being house no. 63 situated at Lalkurti, which has been locked by the petitioner and the petitioner has also got one vacant plot in front of Seventh Day School.

The landlord has stated that after the dearth of Jaswatn Singh, petitioner and his sons never occupied the premises and they are residing in their respective premises, which are owned by them. The landlord has stated that the premises is being bona fide required by him. The petitioner has contested the application and has stated that the disputed house consists of two rooms of 10' X 14' and 8' X 14' and Mahendra Singh is residing in the premises. In paragraph 20 of the writ petition, it has been stated that in 15 MES colony, tow rooms are available, which are not sufficient for the family members.

Paragraph 20 of the written statement is quoted below;

20. यह कि वादी का यह कहना कि प्रतिवादी मुजिब के पास मकान संख्या 15 एम.ई.एस. कालोनी में उपलब्ध होने के कारण प्रतिवादी केा प्रश्नगत आवास की आवष्यकता नही है कतई तौर पर गलत है इस आवास में केवल दो कमरे हैं तथा प्रतिवादी व उसके परिवार तथा उसके बेरोजगार बेटे व उसके परिवार के लिए नाकाफी है वह विवादित मकान में ही रहता है इसके अलावा प्रतिवादी 31 जनवरी 1999 को सेवा के निवृत हो रहा है और उसे यह आवास खाली करना होगा। इसलिए वादी का यह कहना कि प्रतिवादी के पास उपयुक्त प्रयाप्त स्थान निवास हेतु है, कतई तौर पर गलत है।

So far as the availability of the house as mentioned in the application under section 21 (1)(a) is concerned, it has been stated in reply to para 9 of the petition that he has got the house. So far as the Ratan Singh Bedi is concerned, it is stated that he has also got a house. Both the paragraphs are quoted below:

यह कि वाद पत्र का पैरा 9 में प्रतिवादी तीरथसिहं का मकान सैनिक कालोनी में होना स्वीकार है, वाकी स्वीकार नही है।

यह कि वाद पत्र के पैरा न0 10 में रतनसिंह वेदी का मकान सैनिक कालोनी रूड़की में होना स्वीकार है वाकी स्वीकार नही है।

An additional written statement has also been filed by the petitioner and in paragraph 8 and 9, it has been stated that his wife had constructed a house, and the petitioner has not good relations with her and the same is not covered under Act No. 13 of 1972. The landlord Mali Ram Pande has filed an affidavit and stated that all the three sons have constructed their house. The details are given in paragraph 10,11 and 12 of the affidavit:

यह कि मैं व हल्फ बयान करता हूॅ कि सरदार जसवन्त सिंह के तीनो पुत्र जो कि वाद में विपक्षीगण है में से विपक्षी सं0 1 जो कि एम.ई0 एस0 रूडकी में नौकरी करता है, को विभाग की ओर से मकान न0 15 एम0ई0एस0 कालोनी लालकुर्ती रूडकी में मकान उपलब्ध है तथा अपने परिवार के साथ मकान न0 15 एम0ए0एस0 में ही निवास कर रहा है।

यह कि मै वहलफ बयान करता हूॅ कि स्वर्गीय सरदार जसवन्त सिंह वेदी के दूसरे पुत्र तीरथ सिंह वेदी का सैनिक कालोनी रूडकी में अपना मकान न0 562 है जो उसने लगभग 12 वर्ष पूर्व तामीर कर लिया था और तभी से उसमें निवास कर रहा है।

मैं वहलफ बयान करता हूॅ कि सरदार जसवन्त सिह वेदी के तीसरे पुत्र रतन सिह वेदी का भी सैनिक कालोनी रूडकी में मकान न0 614 है जिसे उसने लगभग 8 वर्ष पूर्व तामिर किया था और रतन सिंह स्वयं और परिवार के साथ अपने तामीरसुदा मकान में रिहायस कर रहें है

In paragraph 16 of the affidavit, it has been stated that the wife of Mahendra Singh has also constructed a house at Dandera, Manglore, Link Road, Roorkee within three kilometers of Nagar Palika and as such he had no right to contest the application. Para 16 of the affidavit is being quoted below:

यह कि वहलफ वयान करता हूॅ कि विपक्षी एम0इ0 एस0 की सेवाओं से सेवानिवृत हो चुका है और उसने अपनी पत्नी के नाम डनडेरा मगलौर लिग रोड पर रूडकी नगर पालिका सीमा के 3 किमी के अन्दर निर्मित कर लिया है जिसमें वह अपनी आवसीय आवष्यकताए पूरी कर हरा है और विवादित भवन के सम्बन्ध में उसे किसी प्रकार की कोई आवष्यकता नही है।

Mahendra Singh Bedi, the petitioner has also filed his affidavit and has not disputed the availability of the house at 15 MES colony, Roorkee.

The Prescribed Authority has allowed the application after considering the affidavits filed by the landlord as well as tenant on the question of bona fide need as well as comparative hardship. The Prescribed Authority has also come to the conclusion that the petitioner has constructed the house within 3 Kms. As will appear from the affidavit paper no. 27 and 29 i. e. affidavit of landlord and Ashok Kumar, paper no. 30 affidavit of B.N.Pande, rejoinder affidavit paper no. 52, the map submitted by the landlord paper no. 27 and the map by which the house has been constructed by the wife of the petitioner at 27/16, Photograph 27/17 and paper no. 28/18 to 27/20 sale-deed dated 8.2.1999, by which wife of the petitioner has purchased the property.

On behalf of the petitioner, affidavit was filed that the relations of the petitioner are not good with his wife and the same has been constructed from the financial help of his sister Kulwant, but no evidence has been filed to that effect. The Prescribed Authority has referred two the sale-deeds. The Prescribed Authority has recorded the following observations so far as the property owned by the wife of the petitioner is concerned:

> स्वयं विपक्षी सं0 1 की पत्नी द्वारा सपथ पत्र में विपक्षी सं0 1 से, 10 वर्षो से अलग रहना बताया है इसके अतिरिक्त यह उल्लेखनीय हे कि विक्रय विलेख 27/18 लगायत 27/20 जिसके तहत श्रीमती हरचरण कौर के द्वारा वैनामा से ग्राम डनडेरा में भूमिक्रय किया जाना बताया है उसमें श्रीमती हरचरण कौर द्वारा अपना निवास स्थान 15 एम0ई0एस0 कालोनी लालकुर्ती का इन्दराज किया गया है। विदित हो कि उक्त वयनामा दिनांक 8.2.99 का है तथा प्रस्तुत वाद दिनांक 8.10.98 को संस्थित किया है । यह स्वयं ही बडा विचित्र लगता है जब कि पति पत्नी के समबन्ध अचछे हो तो भी वह अपने पति के निवास करने के स्थान को बैनामा अभिलेख में दर्षाती हो जबकि स्वं हरचरण कौर द्वारा अपने पति से 10 बर्षो से अलग रहना 47 सपथ पत्र में बताया है । यहॉ यह भी उल्लेखनीय है कि श्रीमती हरचरण कौर द्वारा एक अन्य प्लाट बर्ष 1992 में क्रय किया जाना बताया है जो पत्रवाली पर 52/28 अभिलेख के रूप में मौजूद है उसमें भी श्रीमती हरचरणाकौर द्वारा अपने निवास का पता 15 एम0ई0एस0 कालोनी ही दर्ज कराया गया ळे उक्त दस्तावेजी साक्ष्य इस तथ्य की और ध्यान आर्कषित करता है कि श्रीमती हरचरण कौर और विपक्षी सं0 1 साथ साथ ही निवास करते हैं अलग अलग नही । इसके अतिरिक्त विपक्षी के द्वारा किसी आधार पर अपने परिवार के सदस्य होना नही माना है, यह स्पष्ट नही है क्यों कि घारा 3 उ0प्र0 अरबन बिल्डिग अधि0 1972 के तहत परिवार की परिभाषा

में पत्नी का होना माना गया है जहॉ तक यह प्रष्न कि श्रीमती अरचरण कौर के द्वारा निर्मित आवास जो कि ग्राम डन्डेरा में स्थित है रूडकी नगरपालिका सीमा के 3 किमी की सीमा में स्थित है को सिद्ध करने का दायित्व विपक्षी नं0 1 पर हैं ।

On the basis of the evidence on record, the Prescribed Authority has recorded a finding that the landlord required the premises for his use and occupation. So far as the comparative hardship is concerned, the same was also decided in favour of the landlord.

The petitioner went in appeal and the Appellate Authority has dismissed the appeal by holding that the landlord requires the premises as he has got only four rooms with him, when in a point of fact the family member consists of Mali Ram Pande (respondent no. 3), his three sons, namely, B.N.Pande, J.N.Pande, V.N.Pande, his daughters,namely ,Smt. Asha Manor, Km. Geeta Pande, his daughter-in-law (wife of B.N.Pande), his grand- sons, namely, Romil Pande, Rahul Pande and Sharad Pande (three major sons of B.N.Pande), his daughter-in-law (wife of second son J.N.Pande), his grand- daughters Km. Shald and Km. Shagun (daughters of J.N.Pande), his grand- son Ankit Pande (son of J.N.Pande), his dauther-in-law (wife of V.N Pande), his grand-sons Ankush Pande and Anuj Pande (sons of V.N.Pande).

So far as the comparative hardship is concerned, a finding has been recorded that the tenant had already constructed his house in the name of his wife within the Municipal limits of Nagar Palika and, therefore, he has no and in view of the fact that tenant has already constructed his house own and in view of the explanation to section 21(1)(a) of Act No. XIII of 1972, he is also debarred from raising the objection.

The Prescribed Authority, however, has considered comparative hardship as well, the finding having been confirmed by the Appellate Court by observing that the petitioner has constructed his own house in the name of his wife, therefore, need as well as hardship lies in favour of the landlord.

Both the Courts below have considered the *bona fide* need of the landlord and since the requirement has already been confirmed by the Appellate Court, the petitioner loses his right to object the release of the accommodation as he himself has constructed his own house.

Applicability of Explanation

Apart from the aforesaid, the explanation to section 21(1)(a) debars the tenant from contesting thd case on merit, in the event he had constructed his own house. Explanation to 21 (1) of the Act provides as under:

Explanation: In thecase of a residential building-

(i) Where the tenant or nay member of his family who has been normally residing with him or is wholly dependent on him has built or has otherwise acquired in a vacant state or has got vacated after acquisition a resdidential building in the same city, municipality, notified area or town area, no objection by tenant against an application under this subsection shall be entertained."

[*Note:* For the purposes of this clause a person shall be deemed to have otherwise acquired a building, if he is occupying a public building for residential purposes as a tenant, allottee or licensee]

(ii) omitted

(iii) where the landlord of any building is-

(1) a serving or retired Indian Soldier as defined in the Indian Soldiers (Litigation) Act, 1925 (IV of 1925), and such building was let out at nay time before his retirement, or

(2) a widow of such a soldier and such building was let out at any time before the retirement or death of her husband, whichever, occurred earlier and such landlord needs such building for occupation by himself or the members of his family for residential purposes, then his representation that he needs the buiding for residential purposes for himself or the members of his family shall be deemed sufficient for the purpose of clause (a) and where such landlord owns more than one building his provision shall apply in respect of one building only]."

In the present case, although the Court's below have considered the requirement of the landlord and both the Courts below have recorded a finding that the landlord requires the premises for use and occupation, the

Prescribed Authority has also recorded a finding of fact with regard to the *bona fide* need and comparative hardship. The Appellate Authority after considering the *bona fide* need has recorded a finding that the petitioner has no right to take a defence as he had already constructed a house.

In the case of Shanti Devi Vs. Ist Upper District Judge, Haridwar reported in 2000(2) Allahabad Rent Cases, 386 which has been confirmed by the Apex Court, it has been held as under:

> "Admittedly Sheel Chand was a tenant. He died during the pendency of the case leaving behind him Smt. Shanti Devi, his widow and two sons, Pramod Kumar and Rakesh Kumar. Pramod Kumar, son of the petitioner no.1 was allotted EWS flat and his family is residing therein. Respondent no.1 took the views that as one of the family members of the deceased tenant has acquired an accommodation in the same city, explanation referred to above is applicable in this case. Learned counsel for the petitioner contended that the explanation referred to above will be applicable only when two conditions are satisfied, namely, (1) that the member of the family who has acquired the accommodatin was residing with the tenant and (2) was wholly dependent upon him but both these conditions have not been satisfied. He has placed reliance upon the decision Kalpanath Pande Vs. XIth Additional District Judge, Lucknow and others, 1993 (2) A.R.C. 67 and Yogendra Nath Jain Vs. IIIrd Additional District Judge, Meerut and others, 1998 (1) A.R.C. 444. Pramod Kumar was admittedly living with his father but it is alleged that he became independent since the year 1970 and thereafter he was not residing with his father and he was not dependent upon him at the time when he acquired the land. It is not necessary to examine the controversy as regards to the applicability of the explanation under the facts and circumstances of the present case as the Appellate Authority has examined the hardship, which the parties may suffer on account of the application being allowed or rejected by it. The petitioner no.2 is an earning member of the family. The application was filed in the year 1992 and almost 8 years have passed, they have not shown that they made any sincere effort to find out any alternative accommodation. Petitioner no.1 is alleged to be living with his son. The application was filed against four sets of tenants. The two tenants have already vacated and the third tenant has not filed any writ petition in this Court. The disputed accommodation cannot be raised unless the disputed accommodation is also released in favour of the respondent no.2 and in these circumstances, the respondent no.1 was justified in holding that the respondent no.2 would suffer a greater hardship in case the application is rejected."

Relevant case law on the Bona fide Need

So far as the bonafide need of the landlord is concerned, both the Courts below have recorded concurrent finding of fact.

In Atma S.Berar Vs. Mukhtiar Singh (2003)2 Supreme Court Cases 3, after relying upon the judgment of the Prativa Devi Vs. T.V.Krishnan (1996) 5 SCC 353, Ram Dass Vs. Ishwar Chander (1998) 3 SCC 131, Shiv Sarup Gupta Vs. Dr. Mahesh Chnad Gupta (1999) 6 SCC 222, it has been held by the Apex court that the landlord is the best judge of his residential requirement. He has complete freedom in the matter. The observations of the apex Court are quoted below:

> "We need only remind ourselves of the observatioins made by a three Judge Bench of this Court ion Prativa Devi case (SCC p.355, para 2):
>
> > " The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the Courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own."
>
> The High Court need not be solicitous and ventue in suggesting what would be more appropriate for the landlord to do.
>
> That was the lookout of the appellant and not of the High Court. The gratuitous advice given by the High Court was uncalled for…..There is no law which deprives the landlord of the beneficial enjoyment of his property."

In Joginder Pal Vs. Naval Kishore Behal 2002 Supreme Court and Full Bench, Rent Cases page 388, the apex Court after relying upon the judgment of Mst. Bega Behum and others Vs. Abdul Ahad Khan (1979)1 SCC 273 and Shiv Shiv Sarup Vs. Dr. Mahesh Chand Gupta, 1999 SCFBRC 330 in para 8, 9, 10, 16 and 17 held as under:

> "8. The need for reasonable interpretation of Rent Control Legislation was emphasized by the Court in Mst. Bega Begum and others Vs. Abul "Ahad Khan (dead by Lrs. And others, (1979) 1 SCC 279: 1986 SCFBRC 346. Speaking in the context of reasonable requirement of landlord as a ground for eviction the Court guarded against any artificial extension entailing stretching or straining of language so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. The Court warned that such a

course would defeat the very purpos3e of the Act which affords the facility of eviction of the tenant to the landlord on certain specified gourds. In Kewal Singh Vs. Lajwanti, (1980) 1 SCC 290, this Court has observed while the rent control legislation has given a number of facilities to the tenants it should not be construed so as to destroy the limited relief which it seeks to give to the landlord also. For instance one eviction which is contained in almost the Rent Control Act in the contrary is the question of landlord's bona fide personal necessity. The concept of bona fide necessity should be meaningfully construed to make the relief granted to the landlord real and practical. Recently in Shiv Sarup Vs Dr. Mahesh Chand Gupta, 1999 SCFBRC 330: (1999) 6 SCC 222, the Court has held that the concept of bona fide need or genuine requirement needs a practical approach instructed by realities of life. An approach either too liberal or too conservative or pedantic must be guarded against.

9. The Rent Control Legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The Legislative intent has to be respected by Courts, while interpreting the laws. But it is being uncharitable to Legislature if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants go to the extent of being unfair to the landlords. The Legislature is fair to the tenants as to the landlords- both. The Courts have to adopt a reasonable and balanced approach while interpreting Rent Control Legislations starting with an assumption that equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interests of the landlord the Court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlord too are weak and feeble and feel humble."

10. Both the learned counsel for the parties submitted that so far as the expression 'his own use' as occurring in Section 13(3)(ii)(a) is concerned, no occasion has hitherto before arisen enabling this Court making an authoriatative interpretation and pronouncement. The nearest available is Mst. Bega Begum and others (supra) which has been referred to by the High Court in its impugned judgment and was relied on by Shir Sudhir Chandra, the learned Senior Counsel for the landlord-respondent. Section 11(1)(h) of J & K Houses and Shops Rent Control Act, 1966 provides for the tenant being evicted if the landlord requires the house for his own occupation. The Court held that the provision is meant for the benefit of the landlord and therefore it must be so construed as to advance the object of the Act. The words "own occupation" contemplate the actual possession of the landlord whether for his own residence or for his business. Furthermore, the provision is wide enough to include the necessity of not only the landlord but also of the persons who are living with him as members of the same family. The words 'own occupation' cannot be so

narrowly interpreted as to indicate actual physical possession of the landlord personally and nothing more than that.

…….

16. A Division Bench of Patna High Court has opined in Bidhubhusan Sen Vs.Commissioner, Patna Dvisin, Patna and another, 1955 BLJR 654 that the expression “his own occupatin” as occurring in sub-section (3)(a) of Section 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 does not mean only the occupation of the landlord himself but includes the occupation of other persons who live with the landlord and are economically dependent on him. The requirement of nephew, whose maintenance was responsibility of the landlord was held to be covered by the expression ‘his own occupation’ of the landlord.

17. In Puspa Lata Debi Vs. Dinesh Chandra Das, 85, C.L.J. 74, P.B. mukharji, J.(as His Lordship then was) observed that the expression “for his own occupation” in section 11 (1)(f) of W.B. Premises Rent Control (Temporary Provisions) Act, 1949 does not necessarily mean of the particular individual alone but must be widely interpreted to include the family and dependents. The context of social order, the habits and ideas of living and the religious and socio-religious customs of the community to which the individual concerned belongs are relevant determining factors.”

In Bahar Ahmad Vs. Additional District and Sessions Judge V Fast Track Court, Dehradun and others [2003(2) ARC 596], after relying upon the judgment of the Apex Court in para 21,22,23,24 and 25, it has been held as under:

“In Smt. Parativa Devi Vs. T.V.Krishnan, 1987 SCFBRC 242, it has been held by the Apex Court that since the landlord has no legal right to occupy any of the shops, the findings of the Appellate Court therefore, cannot be interfered. The findings of the Apex Court are given below:

“In considering the availability of alternative accommodation, the Court has to consider not merely whether such accommodation is available but also whether the landlord has legal right to such accommodation. The appellant had established her bona fide personal requirement of the demised premises under section 14 (1) (e) of the Act and her claim could not be disallowed merely on the ground that she was staying as a guest with a family friend by force of circumstances.”

Similar view has been taken in the case of Smt Sarla Ahuja Vs. United India Insurance Co. Ltd AIR 1999 SC page no. 103. It has been held by the apex Court as under:-

“ When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the

presumption that requirement is not bonafide. When other conditions of the clause are satisfied and when the landlord shows a prima facts case it is open to the Rent Controller to draw a presumption that the requirement of the landlord is bonafide. It is often said by Courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bonafide of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself."

Relevant case law on Comparative hardship

Relying upon the judgment of Apex Court Bega Begam Vs. Abdul Ahmad Khan reported in AIR 1979 SC 272, it has been observed in Prem Prakash Gupta and others Vs. Second Additional District Judge, Allahabad and others – Allahabad Rent Cases 1993 (1) page 77, that no doubt true that the tenant will have to be ousted from a house, if a decree of eviction has been passed, yet such an event by itself will not be a valid ground for refusing a decree for eviction. The observation in the case of Prem Prakash Gupta (supra) is quoted as below:

" As observed by this Court in its decision in the case of Rajeshwari Prasad Vs. Fateh Bahadur Chaturvedi and othrs reported in 1984 (1) A.R.C. 387, the *bona fide* need is the foundation of application for eviction of a tenant without which it cannot be allowed. Hardship is relative word" ……

In the case of Bega Begum and Abdul Ahmad Khan, reported in AIR 1979 SC 272:1986 SCFBRC 346, the Apex Court had observed that while it was not doubt true that the tenant will have to be ousted from a house if decree of eviction had been passed yet such an event by itself could not be a valid ground for refusing ad decree for eviction. While considering the question of relative hardship the requirement of the landlord having regard to his profession or calling or even the status have to be taken into account. In the present case while the landlord had led sufficient evidence to show that no other alternative accommodation was available, the tenant had not let any such evidence which could show that he had ever attempted to search for an alternative accommodation or ever attempted to seek allotment of any accommodation which could be utilized for shifting his business which was dwindling day by day and as observed by the Appellate Authority itself, had been closing during the pendency of appeal.

In this case where there is inaction on the part of the tenant in searching for an alternative accommodation by seeking allotment or otherwise inspite of coming to know that the building in his tenancy is

genuinely required by the landlord for satisfying his bona fide need, the question of relative hardships envisaged under the 4th proviso to section 21 of the Act deserves to be considered liberally in favour of the landlord specially when the bona fide need for the grant of release sought for is established. While it is true that a proviso embraces the field which is covered by the main provision and the main part cannot be construed in such a manner so as to render a proviso redundant yet under the scheme of the Act, the 4th proviso to section 21 does not appear to fall within those exceptional cases where this proviso may be said to be a part of the substantive provision itself. It should also not be lost sight of that a proviso cannot be permitted to defeat the basis intent expressed in the substantive provision which, as is apparent from the perusal of section 21 of the Act is to enquire the availability of the demised premises to the landlord on his availability establishing the bona fide requirement of the same for the purpose envisaged in that section.

The connotation of the term 'requirement should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get an order of release. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds contemplated under section 21 of the Act. The provisions contained in the Act strike a just balance between the genuine need of the landlord on the one hand and the great inconvenience and troubles of the tenants on the other. Since section 21 of the Act is meant for the benefit of the landlord, therefore, it must be so construed as to advance the object behind the said provision. The tenant has to establish that if he is evicted he will suffer greater hardship as compared to the landlord and must lead clear evidence to show that inspite of the best efforts he was unable to get another alternative suitable accommodation in the absence whereof the scale of relative hardship may be titled in favour of the landlord as the inconvenience, loss or trouble resulting from a denial of the order of release in favour of the landlord will for outweight the prejudice or the inconvenience which may likely be caused to the tenants."

Rule 16 of Act No. XIII of 1972 has been interpreted in the case of Munni Lal Gupta Vs. 7th Additional District and Sessions Judge, Aligarh reported in 1997 (I) A.R.C. 301. After relying upon the judgment of Rajendra Kumar Gupta Vs. Gopal Krishan and others, A.I.R. 1995 Allahabad 82, it has been held that suitable alternative accommodation, which may become available on an effort being made in that direction is also a factor to be considered and want or earnest efforts in looking for suitable alternative accommodation, disentitles protection given to the tenant while

Considering the comparative hardship of the parties. The observation in the decision of Munni Lal Gupta (supra) are quoted below:

> " A suitable alternative accommodation which may become available on an effort being made in that direction is also in the comprehension of the expression and in the facts and circumstances of the case, it has been held that the petitioner was wanting in earnest efforts in looking fro suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretched. In Rajendra Kumar Gupta Vs. Gopal Kishan and others, AIR 1995 Alld. 82: 1994 ARC 11 , it has been held by Sudhir Narain, J. and I concur with the view taken therein in that "one of the principles for considering comparative hardship of the parties is to find our as to whether the tenant had made a sincere efforts to find out alternative accommodation and had placed materials before the authorities to come to their conclusions that he made such an effort". The fact that earlier application for release met the fate of rejection some 10 years ago, could not be projected backward to operate as an obstacle in the way of the release application being allowed as with the passage of time, the situation has undergone considerable change. Indubitable, landlord Sanjai Gupta did his M.A. after rejection of the earlier applications and his failure to secure employment for himself, lends congency to his moving the present application."

<u>Interference under Article 226/227 of the Constitution of India</u>

The Apex Court has held in Ranjit Singh Vs. Ravi Prakash (2004) 3 Supreme Court Cases 682 as below:

> "Feeling aggrieved by the judgment of the appellate court, the respondent preferred a writ petition in the High Court of Judicature at Allahabad under Article 226 and alternatively under Article 227 of the Constitution. It was heard by the learned Single Judge of the High Court. The High Court has set aside the judgment of the appellate court and restored that of the trial Court. A perusal of the judgment of the High Court shows that the High Court has clearly exceeded its jurisdiction in setting aside the judgment of the appellate court. Though not specifically stated. The phraseology employed by the High Court in its judgment goes to show that the High Court has excercised its certioirari jurisdiction for correcting the judgment of the appellate court."

> In Muni Lal and others Vs. Prescribed Authority and others, AIR 1978 Supreme Court 29: 1981 ARC 470, the apex Court has held as under:
>
> > The only ground on which the decision of the High Court is challenged in this appeal is that the High Court has not examined the question of comparative hardship of the landlord

> and the tenant in rejecting the writ petition of the appellant, we find that the prescribed authority did consider the comparative hardship of the landlord and the tenant in the light of the evidence before it and came to the conclusion that the need of the landlord was greater than that of the tenant. The District Judge also affirmed this view in appeal and when the matter came to the High Court by way of writ petition, the High Court also pointed out in its judgment that " on perusal, the Appellate Court found that the need of the respondent no.3 was greater than that of the petitioners. This is also a finding of fact and is it is not possible to disturb the same in these proceedings." There can be no doubt that a finding that need of the respondent no.3, the landlord was grater than that of the appellant/tenant is a finding of fact and when the High Court had refused to interfere with this finding of fact, we cannot find fault with the High Court, even if the findings were wrong on the evidence before the Court. It is not for the High Court in the exercise of its jurisdiction under Art. 226 of the Constitution to reappraise the evidendce and come to its own conclusion which may be different from that reached by the District Judge or the Aprescribe Authority. We do not, therefore, see any reason to interfere with the decision of the High Court"

In M/s India Pipe Fitting Co. Vs. Fakruddin M.A.Baker, AIR 1978 SC. Supreme Court page no.45:1978 ARC 224 (SC) it has been held that no interference can be called under Article 226/227 of the Constitution of India and the High Court cannot reappraise the evidence in order to come to a different conclusion. The observations of the Apex Court is under:

> "There can be no doubt that a finding that the need of respondent no.3 landlord was grater than that of the appellant/tenant is a fiding of fact, and when the High Court has refused to interfere with this finding of fact, we cannot find fault with the High Court, even if the findings were wrong on the evidence before the Court. It is not for the High Court in the exercise of its jurisdiction under Article 226 of the Constitution to reappraise the evidence and come to its own conclusion which may be different from that reached by the District Judge or the Prescribedd Authority. We do not, therefore, see any reason to interfere with the decision of the High Court."

In Sushila Vs. IInd Additional District Judge, Banda and others reported in 2003 SC and Full Bench Rent Cases 109, the apex Court has held that Rule 16 cannot be the sole criteria or deciding factor to order or not the eviction of a tenant. Therefore, the apex Court has held that even after the consideration of Rule 16 of the rules framed under the Act, the balance tilts

in favour of the unemployed son of the landlady, whose need has been *bona fide* and has also been so accepted by the respondents. The observation of the apex Court as quoted as under:

> " As observed earlier, it is clear that length of period of tenancy as provided under clause (a) of sub-rule 2 of Rule 16 of the Rules, 1972 is the only one of the factors to be taken into account in context with other facts and circumstanc3es of the case. It cannot be a sole criterion or deciding factor to order or not the eviction of the tenant. Considering the facts in the light of Rule 16 pressed into service on behalf of the respondent, we find that according to the guidelines provided therein balance tilts in favour of the unemployed son of the landlady whose need is certainly bona fide and has also been so accepted by the respondent before us."

Conclusions:

In the light of the aforesaid facts, the petitioner has already ample accommodation and apart from the construction of his own house, a finding has been recorded that the other joint tenants i.e. respondent nos. 4 and 5 have also constructed their own houses and are residing alongwith family members and as such the petitioner can have no grievance in view of the various constructions raised by the joint tenants of late Sir Jaswant Singh. They have also not preferred any writ petition and as such the finding of need having already been considered, comparative hardship lie3s in his favour as well.

Apart from the Explanation, since the petitioner and his other brothers i.e. sons of late Jaswant Singh have already constructed house, they shall not suffer any hardship and as such the comparative hardship, lies in favour of the landlord.

Consequently , I find no merit in the writ petition so far as to interfere in the findings of fact under Aeticle 226/227 of the Constitution of India.

The appellant is granted time to vacate the premises by 31.01.2005 provided an undertaking is given by 15th October, 2004 before the

Prescribed Authority starting that he shall vacate the premises by 31st of January, 2005 and he will pay all the dues by 15th October, 2004. In the event of default, the execution of the decree shall proceed forthwith.

Writ petition is dismissed. No order as to costs.

(Rajesh Tandon,J.)

Dt. September 29,

A